



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 04824-99

3 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LCDR [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 26 Jul 99 w/attachments
(2) PERS-85 memo dtd 13 Oct 99
(3) Subject's ltr dtd 16 Nov 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing her failure of selection for promotion before the Fiscal Year (FY) 00 Commander Line Selection Board, so as to be considered by the selection board that next convenes to consider officers of her category for promotion to the grade of commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Ms. Hardbower and LeBlanc and Mr. Kastner, reviewed Petitioner's allegations of error and injustice on 21 January 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that the FY 00 Commander Line Selection Board, convened on 23 February 1999, lacked material information necessary to a fair presentation of her record, specifically, an evaluation report letter-supplement dated 15 June 1999 (copy at enclosure (4) to Petitioner's application) addressed to the Navy Personnel Command (NPC) from her reporting senior, a rear admiral, regarding her detachment of reporting senior fitness report

for 1 November 1997 to 13 March 1998. This report (copy at enclosure (2) to Petitioner's application), in which she was marked "Early Promote" (best) and ranked above the only other lieutenant commander compared with her, reflected a decline, from "5.0" (best) to "4.0" (second best), in two areas from the preceding report for 26 November 1996 to 31 October 1997 (copy at enclosure (1) to Petitioner's application), submitted by the same reporting senior. On 26 March 1998, Petitioner signed the report reflecting a decline in her marks, but declined to make a statement. In his letter-supplement, the reporting senior stated that the two "4.0" marks "...reflect an across the board grade reduction in an effort to further reduce the reporting senior's cumulative grade average and in no way reflect a decline in the member's performance." Petitioner provides a statement from a Navy captain (enclosure (3) to her application) to the effect that during March/April 1998 Petitioner told him she had asked the reporting senior for a letter stating the decline in her marks did not reflect a decline in her performance, but a means of reducing the reporting senior's average; that the reporting senior subsequently contacted him about Petitioner's request; and that he stated "he thought the Fitrep [fitness report] grades were still too high and had decided to deny the request for a letter at that time."

d. In correspondence attached as enclosure (2), the NPC office having cognizance over active duty officer promotions has commented to the effect that Petitioner's application should be denied. They stated her assertion that she was not fairly evaluated is unsubstantiated; that the letter-supplement was not provided to the FY 00 board for review; and that she signed the fitness report to which it relates on 26 March 1998, however, chose not to submit a statement. They concluded that "The absence of the letter cannot be assumed as the basis for [Petitioner's] non-selection."

e. In her letter at enclosure (3), Petitioner strongly disagrees with the advisory opinion at enclosure (2). She points out that the letter-supplement could not be presented to the promotion board, because as of the convening date, the reporting senior had refused to submit one. She says the reason she did not make a statement to the report was that she thought a letter explaining that the grades did not reflect a decline in performance would be issued "as an administrative detail." She insists she was not fairly evaluated by the promotion board without the letter-supplement, because its absence left her with an unexplained decline in marks for two consecutive reporting periods. She maintains she is only requesting that her record compete fairly, with all the information that should have been included, but was not. With the addition of the letter-supplement, she believes her record stands out as an exceptional one. Finally, she states that she deserves the opportunity to come before the next selection board with a "clean slate."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting approval of Petitioner's request.

The Board finds Petitioner did the best she could to get the reporting senior's letter into her record before her consideration for promotion. While they agree with the advisory opinion's statement "The absence of the letter cannot be assumed as the basis for [Petitioner's] non-selection," they find its inclusion might well have enhanced her chances for selection. They conclude that her record was not substantially complete without it, and that its absence denied her fair consideration. In this regard, they recognize that the letter did not indicate she rated higher marks. However, it did clarify that the decline in marks, which was significant as it appeared in a very recent fitness report from a flag officer evaluating Petitioner's performance in her current grade, did not reflect a decline in her performance. Finally, they note that had she made a statement purporting to explain her declining marks, it probably would not have carried the same weight as correspondence to the same effect from the reporting senior who assigned those marks.

In view of the above, the Board recommends the following corrective action:

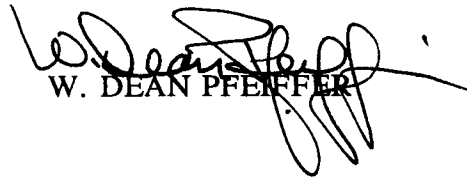
RECOMMENDATION:

- a. That Petitioner's naval record be corrected so that she be considered by the earliest possible selection board convened to consider officers of her category for promotion to commander as an officer who has not failed of selection for promotion to that grade.
 - b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
 - c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:

FEB 16 2000



CHARLES L. TOMPKINS
Deputy Assistant Secretary of the Navy
(Personnel Programs)



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4824-99

5420
Ser 85/219
13 Oct 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] LCDR, USN, [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of LCDR [REDACTED] request for removal of her failure of selection from the FY-00 Active Commander Line Promotion Selection Board.
2. LCDR [REDACTED] request for failure of selection removal is based on her belief that her record was not presented fairly to the board, specifically, that her record did not include a letter supplement as explanation of declining marks on her fitness report for the period 1 November 1997 to 13 March 1998.
3. LCDR [REDACTED]'s request is without merit. Her assertion that she was not fairly evaluated is unsubstantiated. While [REDACTED] later submitted a letter supplement to the fitness report in question, the letter was not provided to the FY-00 board for review prior to convening. Further, she signed the fitness report on 26 March 1998, however, chose not to submit a statement.
4. The absence of the letter cannot be assumed as the basis for LCDR [REDACTED] non-selection. Since board deliberations are secret, the exact reason she failed to select cannot be determined.
5. Recommend disapproval of her request.

[REDACTED]
BCNR Liaison, Officer Promotions and
Enlisted Advancements Division